

U. S. DEPARTMENT OF LABOR
Employees' Compensation Appeals Board

In the Matter of SANDRA D. STRICKLAND and U.S. POSTAL SERVICE,
POST OFFICE, Los Angeles, Calif.

*Docket No. 97-2640; Submitted on the Record;
Issued June 1, 1999*

DECISION and ORDER

Before GEORGE E. RIVERS, DAVID S. GERSON,
WILLIE T.C. THOMAS

The issue is whether appellant's claim for continuation of pay is barred by the time limitation provision of 5 U.S.C. § 8118 of the Federal Employees' Compensation Act.

The Board has duly reviewed the case record in the present appeal and finds that the Office of Workers' Compensation Programs properly determined in its January 14, 1997 decision that appellant was not entitled to continuation of pay because she did not file her claim for a traumatic injury within 30 days of her injury.

Section 8118 of the Act provides for payment of continuation of pay, not to exceed 45 days, to an employee "who has filed a claim with his immediate superior on a form approved by the Secretary of Labor within the time specified in section 8122(a)(2) of this title."¹ The latter section provides that written notice of injury shall be given "within 30 days." The context of section 8122 makes clear that this means within 30 days of the injury.²

Appellant filed a Form CA-1, notice of traumatic injury and claim for continuation of pay/compensation, on November 22, 1996. As this was more than 30 days after her August 27, 1996 injury, her claim for continuation of pay is barred by the applicable time limitation provision.

The Board has held that the responsibility for filing a claim rests with the injured employee.³ Further, the Board has held that section 8122(d)(3) of the Act, which allows the Office to excuse failure to comply with the time limitations provision for filing a claim for

¹ 5 U.S.C. § 8118.

² *George A. Harrell*, 29 ECAB 338 (1978).

³ *See Catherine Budd*, 33 ECAB 1011 (1982).

compensation because of “exceptional circumstances,” is not applicable to section 8118(a),⁴ which sets forth the filing requirements for continuation of pay.⁵ Accordingly, there is no provision in the Act for excusing an employee’s failure to file a claim for continuation of pay within 30 days of the employment injury. The rationale for this finding is set forth fully in the Board’s decision in *William E. Ostertag*.⁶ As a result, regardless of the reason appellant failed to file her claim within 30 days of her injury, her claim for continuation of pay is barred.

The January 14, 1997 decision of the Office of Workers’ Compensation Programs is affirmed.

Dated, Washington, D.C.
June 1, 1999

George E. Rivers
Member

David S. Gerson
Member

Willie T.C. Thomas
Alternate Member

⁴ 5 U.S.C. § 8118(a).

⁵ *Id.* at § 8122(d)(3); *see Michael R. Hrynychuk*, 35 ECAB 1094 (1984).

⁶ 33 ECAB 1925 (1982); *see Patricia J. Kelsesky*, 35 ECAB 549 (1984).